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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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GIOVANNI KURTZE,

Plaintiff,

v.

ERIC JOHNSON, *et al.*,

Defendants.

Case No. 2:17-cv-02756-JAD-GWF

**AMENDED ORDER AND
REPORT AND RECOMMENDATION**

Application to Proceed *in Forma Pauperis*
(ECF No. 1) and Screening of Complaint
(ECF No. 1-1)

This matter comes before the Court on Plaintiff's Application to Proceed *in Forma Pauperis* (ECF No. 1), filed on October 31, 2017.

BACKGROUND

Plaintiff's Complaint is brought pursuant to 42 U.S.C. § 1983. Plaintiff alleges that the State of Nevada and Judge Eric Johnson of the Eighth Judicial District Court violated his 6th Amendment and 8th Amendment rights. Plaintiff appears to have been a criminal defendant in a case before the Eighth Judicial District Court. He asserts that the Defendants unreasonably prolonged his trial in state court and denied him legal supplies.

DISCUSSION

I. Application to Proceed *In Forma Pauperis*

Plaintiff filed this instant action and attached a financial affidavit to his application and complaint as required by 28 U.S.C. § 1915(a). Reviewing Plaintiff's financial affidavit pursuant to 28 U.S.C. § 1915, the Court finds that Plaintiff is unable to pre-pay the full filing fee. As a result, Plaintiff's request to proceed *in forma pauperis* in federal court is granted.

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II. Screening the Complaint

Federal courts must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1),(2).

In addition to the screening requirements under § 1915A, pursuant to the PLRA, a federal court must dismiss a prisoner's claims, "if the allegation of poverty is untrue," or if the action "is frivolous or malicious," "fails to state a claim on which relief may be granted," or "seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2). Dismissal of a complaint for failure to state a claim upon which relief may be granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and the Court applies the same standard under Section 1915(e)(2) when reviewing the adequacy of a complaint or amended complaint.

Review under Fed. R. Civ. P. 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Laboratory Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to state a claim is proper only if it is clear that the plaintiff cannot prove any set of facts in support of the claim that would entitle him or her to relief. *See Morley v. Walker*, 175 F.3d 756, 759 (9th Cir. 1999). In making this determination, the Court takes as true all allegations of material fact stated in the complaint, and the Court construes them in the light most favorable to the plaintiff. *See Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996). Allegations in a *pro se* complaint are held to less stringent standards than formal pleadings drafted by lawyers. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972) (*per curiam*). While the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff must provide more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1964-1965 (2007). A formulaic recitation of the elements of a cause of action is insufficient. *Id.*, *See Papasan v. Allain*, 478 U.S. 265, 286 (1986).

1 All or part of a complaint filed by a prisoner may therefore be dismissed *sua sponte* if the
2 prisoner's claims lack an arguable basis either in law or in fact. This includes claims based on
3 legal conclusions that are untenable (*e.g.* claims against defendants who are immune from suit or
4 claims of infringement of a legal interest which clearly does not exist), as well as claims based
5 on fanciful factual allegations (*e.g.* fantastic or delusional scenarios). *See Neitzke v. Williams*,
6 490 U.S. 319, 327-28 (1989); *see also McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

7 **III. Instant Complaint**

8 **A. Plaintiff's § 1983 Claim**

9 42 U.S.C. § 1983 creates a path for the private enforcement of substantive rights created
10 by the Constitution and Federal Statutes. *Graham v. Connor*, 490 U.S. 386, 393-94 (1989). In
11 order to state a claim under § 1983, a plaintiff "must allege the violation of a right secured by the
12 Constitution and the laws of the United States, and must show that the alleged deprivation was
13 committed by a person acting under color of law." *West v. Atkins*, 487 U.S. 42, 48-49 (1988).
14 Plaintiff's complaint seeks relief for what appears to be alleged violations of his Sixth and Eighth
15 Amendment rights. He alleges that the Defendants unreasonably prolonged his trial in state
16 court in which he was a criminal defendant and denied him legal supplies. He further alleges
17 that he suffers from a brain disease.

18 **1. State of Nevada**

19 Under the 11th Amendment, plaintiffs are barred from bringing suits against states in
20 federal court. *See P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 144 (1993);
21 *Been tjes v. Placer County Air Pollution Control Dist.*, 397 F.3d 775, 777 (9th Cir.2005). States
22 are not persons for purposes of § 1983. *See Arizonans for Official English v. Arizona*, 520 U.S.
23 43, 69 (1997); *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989); *Jackson v. Barnes*, 749
24 F.3d 755, 764 (9th Cir. 2014), *cert. denied*, 135 S. Ct. 980 (2015). Therefore, § 1983 claims against
25 states are legally frivolous. *See Jackson v. Arizona*, 885 F.2d 639, 641 (9th Cir. 1989), *superseded*
26 *by statute on other grounds as stated in Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en
27 banc). As a result, the Court recommends dismissal of Plaintiff's claims against the State of
28 Nevada.

2. Judicial Immunity

The United States Supreme Court has repeatedly held that judges and those performing quasi-judicial functions are absolutely immune from damages for acts performed within their judicial capacities. *See, e.g., Nixon v. Fitzgerald*, 457 U.S. 731, 766 (1982); *see also Miller v. Davis*, 521 F.3d 1142, 1145 (9th Cir. 2008); *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986) (en banc) (stating that “[j]udges . . . are absolutely immune from damage liability for acts performed in their official capacities”); *Gregory v. Thompson*, 500 F.2d 59, 62 (9th Cir. 1974) (“A seemingly impregnable fortress in American Jurisprudence is the absolute immunity of judges from civil liability for acts done by them within their judicial jurisdiction.”). “Courts have extended absolute judicial immunity from damage actions under 42 U.S.C. § 1983 not only to judges but also to officers whose functions bear a close association to the judicial process.” *Demoran v. Witt*, 781 F.2d 155, 156 (9th Cir. 1986). “Judges and those performing judge-like functions are absolutely immune from damage liability for acts performed in their official capacities.” *Ashelman*, 793 F.2d at 1075; *Miller*, 521 F.3d at 1145; *Partington v. Gedan*, 961 F.2d 852, 860 n.8 (9th Cir. 1992).

Plaintiff alleges that Defendant Johnson prolonged his trial and denied him legal supplies, such as envelopes. Plaintiff asserts claims against Defendant Johnson for conduct undertaken in his official judicial capacities. Judge Johnson is, therefore, entitled to judicial immunity from Plaintiff’s § 1983 claims. As a result, the Court recommends dismissal of Plaintiff’s claims against Judge Johnson with prejudice for failure to state a claim upon which relief can be granted. It is clear from the face of his complaint that these deficiencies cannot be cured by amendment. Thus, Defendant will not be granted leave to amend his complaint. Accordingly,

IT IS THEREFORE ORDERED that Plaintiff’s Application to Proceed *in Forma Pauperis* is **granted**. Plaintiff shall not be required to pay an initial partial filing fee. However, even if this action is dismissed, the full filing fee must still be paid pursuant to 28 U.S.C. § 1915(b)(2).

IT IS FURTHER ORDERED that the movant herein is permitted to maintain this action to conclusion without the necessity of prepayment of any additional fees or costs or the giving of

1 security therefor. This Order granting *forma pauperis* status shall not extend to the issuance of
2 subpoenas at government expense.

3 **IT IS FURTHER ORDERED** that, pursuant to 28 U.S.C. § 1915(b)(2), the Nevada
4 Department of Corrections shall pay to the Clerk of the United States District Court, District of
5 Nevada, 20% of the preceding month's deposits to Plaintiff's account (**inmate #1206860**), in the
6 months that the account exceeds \$10.00, until the full \$350.00 filing fee has been paid for this
7 action. The Clerk of the Court shall send a copy of this Order to the Finance Division of the
8 Clerk's Office. The Clerk shall also send a copy of this Order to the attention of the Chief of
9 Inmate Services for the Nevada Department of Corrections, P.O. Box 7011, Carson City, NV
10 89702.

11 **IT IS FURTHER ORDERED** that the Clerk of Court shall file the Complaint (#1-1).

12 **RECOMMENDATION**

13 **IT IS HEREBY RECOMMENDED** that Plaintiff's Complaint against Defendants
14 Johnson and the State of Nevada be **dismissed** with prejudice due to Plaintiff's failure to state a
15 claim for which relief can be granted.

16 **NOTICE**

17 Under Local Rule IB 3-2, any objection to this Finding and Recommendation must be in
18 writing and filed with the Clerk of the Court within fourteen (14) days. Appeals may be
19 waived due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S.
20 140, 142 (1985). Failure to file objections within the specified time or failure to properly address
21 and brief the objectionable issues waives the right to appeal the District Court's order and/or
22 appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157
23 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

24 Dated this 15th day of November, 2018.

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26 
27 GEORGE FOLEY, JR.
28 UNITED STATES MAGISTRATE JUDGE